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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/813,267   | 03/20/2001  | Tyler Lowrey         | 2024.24             | 2620             |
| 24963  | 7590        | 12/01/2004           | EXAMINER            |                  |
| ENERGY CONVERSION DEVICES, INC.<br>2956 WATERVIEW DRIVE<br>ROCHESTER HILLS, MI 48309 |             |                      | CAO, PHAT X         |                  |
|  |             |                      | ART UNIT            | PAPER NUMBER     |
|  |             |                      | 2814                |                  |

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Please find below and/or attached an Office communication concerning this application or proceeding.



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| APPLICATION NO./<br>CONTROL NO. | FILING DATE | FIRST NAMED INVENTOR /<br>PATENT IN REEXAMINATION | ATTORNEY DOCKET NO. |
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| EXAMINER |
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Commissioner for Patents

See attached papers for details

NON-RESPONSIVE AMENDMENT

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1. The cancellation of claims 1-49 in paper filed on 5/21/04 is acknowledged.
2. Newly submitted claims 50-65 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: the product as claimed in newly submitted claims 50-60 discloses an electrically contact having a second dielectric layer disposed on the conductive layer within the opening, the conductive layer including a first portion and a second portion on the sidewall surface, the second portion raised above the upper surface of the first portion (see Fig. 3C). On the other hand, the original elected claims disclose the electrically contact having no second dielectric layer disposed on the conductive layer within the opening, and having no second portion of the conductive layer raised above the upper surface of the first portion of the conductive layer formed on the sidewall surface of the opening;

Similarly, the product as claimed in newly submitted claims 61-65 discloses an electrically contact having a cup-shaped and coupled to a substrate, the cup-shaped contact having an open end, having a dielectric material formed over the interior surface of the cup-shaped contact, and having protrusion(s) extending upward from the rim of the cup-shaped contact. On the other hand, the original elected claims disclose the product comprising an electrically contact having no open ends, no dielectric material formed over the interior surface of the cup-shaped contact, and no protrusion(s) extending upward from the rim of the cup-shaped contact.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 50-65 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

### ***Response to Arguments***

3. Applicant argues that the new independent claim 50 is supported by the original independent claim 17 because they both disclose the structure recited in Fig. 2E.

The examiner disagrees because Fig. 2E does not show "said layer having a raised portion extending from an edge of said conductive layer on said sidewall surface" as recited in the original independent claim 17, but rather, the structure recited in the original independent claim 17 is shown by Fig. 1C. Similarly, Fig. 2E does not show "said conductive layer including a first portion on said sidewall surface and a second portion on said sidewall surface, said second portion raised above the upper surface of said first portion" as recited in the new independent claim 50, but rather, the structure recited in the new independent claim 50 is shown by Fig. 3C.

Applicant also argues that the new independent claim 61 is supported by the original claim 10.

The examiner disagrees because the original claim 10 discloses the memory element comprising an electrically contact having no open ends, no dielectric material formed over the interior surface of the cup-shaped contact, and no protrusion(s)

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extending upward from the rim of the cup-shaped contact as recited in new independent claim 61.

4. The amendment filed on 5/21/04 canceling all claims drawn to the elected invention and presenting only claims drawn to a non-elected invention is non-responsive (MPEP § 821.03). The remaining claims are not readable on the elected invention because newly submitted claims 50-65 are directed to an electrically contact which is different patentably invention from the original elected claims (see the reasons above) .

Since the above-mentioned amendment appears to be a *bona fide* attempt to reply, applicant is given a TIME PERIOD of ONE (1) MONTH or THIRTY (30) DAYS, whichever is longer, from the mailing date of this notice within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD UNDER 37 CFR 1.136(a) ARE AVAILABLE.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phat X. Cao whose telephone number is (571) 272-1703. The examiner can normally be reached on Monday - Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wael Fahmy can be reached on (571) 272-1705. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

PC  
November 24, 2004

  
PHAT X. CAO  
PRIMARY EXAMINER